



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

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| Date Amended: | 03/24/03 | Bill No: | AB 553 |
| Tax: | Local Sales and Use | Author: | Chavez |
| Board Position: | | Related Bills: | AB 376 (2001) SB 1114 (2001) |

BILL SUMMARY

This bill would specify the allocation method of the 1.25 percent local tax on sales of concrete by a concrete batch plant and from which delivery of the concrete is made to the end-use customer.

Summary of Amendments

Since the previous analysis, this bill was amended to: (1) extend the sunset date for the proposed local tax allocation from January 1, 2005 to January 1, 2007; and (2) extend the due date of the report prepared by the Legislative Analyst from December 31, 2003 to December 31, 2005.

ANALYSIS

Current Law

The Bradley-Burns Uniform Local Sales and Use Tax Law (commencing with Section 7200 of the Revenue and Taxation Code) authorizes counties and cities to impose a local sales and use tax. The tax rate is fixed at $1\frac{1}{4}$ percent of the sales price of tangible personal property sold at retail in the county, or purchased outside the county for use in the county. All counties within California have adopted ordinances under the terms of the Bradley-Burns Law and levy the $1\frac{1}{4}$ percent local tax.

Under the Bradley-Burns Law, the $\frac{1}{4}$ percent tax rate is earmarked for county transportation purposes, and 1 percent may be used for general purposes. Cities are authorized to impose a local sales and use tax rate of up to 1 percent, which is credited against the county rate so that the combined local tax rate under the Bradley-Burns Law does not exceed $1\frac{1}{4}$ percent. (Most city ordinances provide for a city tax rate equaling one percent; however, there are several cities that have ordinances providing for a small fraction less than 1 percent).

Section 7205 of the Bradley-Burns law specifies the "place of sale" for purposes of the local sales tax. Under this section, in general, all retail sales in California are consummated at the place of business of the retailer. **If a retailer has only one place of business** in California, the local sales tax derived from those sales made at the retailer's place of business are allocated to the city, county, or city and county in which

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the retailer's place of business is located. If title to the property sold passes to the purchaser in California, it is immaterial that title passes to the purchaser at a place outside the city, county, or city and county in which the retailer's place of business is located, or that the property sold is never within the city, county, or city and county in which the retailer's place of business is located.

Therefore, if a concrete batch plant in California has only one place of business, the local sales tax derived from the sale of concrete by that manufacturer would be allocated to the city, county, or city and county in which the plant is located. It is immaterial whether the purchaser takes title to the concrete at a location outside of the city, county, or city and county.

If a retailer has more than one place of business in California, the place or places at which the retail sales occur for purposes of allocating the local sales tax is determined in accordance with regulations adopted by the Board.

Regulation 1802, "Place of Sale and Use for Purposes of Bradley-Burns Uniform Local Sales and Use Taxes," interprets and makes specific the laws governing the "place of sale" for purposes of allocating local tax revenues to local jurisdictions. Under paragraph (2) of subdivision (a), **if a retailer has more than one place of business** in California which participates in the sale, the sale occurs at the place of business where the principal negotiations are carried on.

Therefore, for purposes of the local tax, a concrete manufacturer in California with more than one place of business is required to allocate the local tax to the local taxing jurisdiction in which that sale was principally negotiated. If the sale was principally negotiated in a city or county other than where the concrete was manufactured, the local tax is required to be allocated to that city or county in which the sale was principally negotiated.

Proposed Law

This bill would amend Section 7205 of the Revenue and Taxation Code to specify that, for purposes of allocating the local sales tax on sales of concrete by a concrete batch plant in California by retailers with more than one place of business in this state, the place at which the retail sale of that concrete is consummated is the point of manufacture of the concrete at the batch plant from which delivery of the concrete is made to the end-use customer.

The provisions of this bill would remain in effect until January 1, 2007, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

The bill would become effective immediately but would become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date of this bill.

Additionally, this bill contains an uncoded section that would require the Legislative Analyst, with the assistance of the Board of Equalization, to submit a report to the Legislature by December 31, 2005 that addresses the following issues:

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- 1) The fiscal implications for local governments of changing the allocation of local sales tax revenues from a system based on point of negotiation to one based on point of delivery, for items delivered in California but outside the county in which the retailer is located.
- 2) The nature and frequency of revenue-sharing agreements between retailers and local taxing jurisdictions.
- 3) The types of businesses with multiple distribution locations within California that are typically known to place service burdens, including environmental problems, on the jurisdictions in which they are located.

Background

This bill is identical to Senate Bill 1114 (Brulte) and Assembly Bill 376 (Chavez) of the 2001-2002 Legislative Session. Both bills died in Assembly Appropriations.

The sponsor of SB 1114 and AB 376 was the City of Moreno Valley. Based on information from the City of Moreno Valley and various newspaper articles, Robertson's Ready-Mix entered into an agreement with the City of Corona in November 2000. As part of this agreement, Robertson's Ready-Mix (Robertson's) agreed to consolidate its sales operations into a single sales location in the City of Corona. In exchange, Robertson's would receive a rebate of the local sales tax that would be shifted from the cities and counties (where Robertson's had made sales at each of its concrete batch plants) to the City of Corona.

Robertson's Ready-Mix had maintained sales offices at each of its 25 concrete batch plants. According to information from Robertson's website, Robertson's is a leading producer of ready-mix concrete and construction aggregates, with 25 concrete batch plants and 5 aggregate facilities. Robertson's facilities are located in the counties of Los Angeles, Orange, Riverside, and San Bernardino.

According to information from newspaper articles, Robertson's had made sales at its concrete batch plants and had allocated the local sales tax to the cities or counties where the concrete batch plants were located. However, once the sales operations were consolidated, Robertson's was now making sales from a single sales location. As a result, the local sales tax was reallocated from the cities and counties where Robertson's previously maintained separate sales offices (at the concrete batch plants) to the City of Corona.

The consolidation of Robertson's sales operations resulted in a significant loss in local tax revenue to the cities and counties which previously had received the local sales tax. There are approximately 16 cities (Adelanto, Anaheim, Beaumont, Highland, Irvine, Irwindale, Lake Forest, Moreno Valley, Paramount, Pasadena, Pomona, San Clemente, San Jacinto, Santa Ana, Santa Fe Springs, and Vernon) and four counties affected by this change.

Based on newspaper articles, fourteen cities contested the agreement between the City of Corona and Robertson's, and filed an opposition with the Riverside Superior Court in January 2001. The City of Moreno Valley's website discloses the following: The case

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of *City of Corona vs. All Persons Interested in the Matter of the Validity of the Continuous Operating Covenant Agreement Dated November 15, 2000, By and Between the City of Corona, A California Municipal Corporation and Robertson's Ready Mix, LTD., a California Limited Partnership*, Riverside Superior Court Case No. RSC 351283. According to legal counsel of the City of Moreno Valley, the City of Corona filed a motion for summary judgment in April 2001. In September 2001, the motion for summary judgment was denied.

Subsequently, in October 2001, the city council members of Corona met and decided to terminate the agreement with Robertson's. This action dismissed the validation action that had been originally filed by Corona pursuant to California Civil Code of Procedure 860. According to legal counsel of the City of Moreno Valley, when Corona agreed to break the agreement, and the validation action was dismissed, the cities no longer had a cause of action. However, according to the City of Moreno Valley, terminating the agreement with Robertson's did not result in any local sales tax revenue being shifted from Corona back to the cities and counties where the concrete batch plants are located.

COMMENTS

- 1. Sponsor and purpose.** This bill is sponsored by the City of Moreno Valley, and co-sponsored by the cities of Beaumont and Irwindale in an effort to receive the local sales tax revenues generated by concrete batch plants in their areas. One concrete manufacturer consolidated its sales operations, which shifted the local revenue allocations from the cities in which its numerous batch plants are located, to the one location where all of its sales operation now take place.
- 2. Summary of March 24 amendments.** The amendments extend the sunset date of the local tax allocation from January 1, 2005 to January 1, 2007, and extend the due date of the report prepared by the Legislative Analyst from December 31, 2003 to December 31, 2005.
- 3. This bill could set a precedent.** Exceptions to the allocation procedures contained in the Bradley-Burns Law have already been made for passenger vehicle leases and jet fuel sales. If this bill is enacted, other cities and counties that host delivery facilities (such as card-lock fuel stations) could ask for similar treatment, thereby further altering the long-standing, uniform, allocation principles contained in the Bradley-Burns Law.
- 4. This bill would impact the local sales tax allocations for all concrete manufacturers.** While this bill was written to address one specific concrete manufacturers' proposed consolidation, it would have the effect of changing local sales tax allocations for all concrete manufacturers, whether or not sales had ever been negotiated at the batch plants.
- 5. Prior legislation.** Assembly Bill 66 (Chapter 1027, Statutes of 1998) amended Revenue and Taxation Code Section 7205 to provide a similar tax allocation provision for sales of jet fuel.

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COST ESTIMATE

Minor administrative costs would be incurred in notifying affected retailers and jurisdictions, changing the regulation, reviewing schedules for proper allocation, and answering inquiries.

REVENUE ESTIMATE

Enactment of this bill would not increase or decrease current taxable sales revenue, but would result in the shifting of local sales tax from one local jurisdiction to another. However, since the law prohibits the Board from divulging confidential information regarding taxpayers who report tax to the Board, and an individual taxpayer could be identified by any dollar figures provided, the Board cannot divulge the actual amount of revenues that would be shifted if this bill were enacted.

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